

SAHA UPDATE: CLAASE v SAA

South African History Archive
12 December 2006

The South African History Archive welcomes the decision of the Supreme Court in granting access to records requested by Claase, a former employee of the Respondent South African Airways, and imposing a punitive costs order for the Respondent's unnecessary delay and obstruction.

The court stated:

[1] ... It is unfortunate that the Promotion of Access to Information Act 2 of 2000 ('the Act') which (as appears from the preamble) was intended to: ... should result in pre-trial litigation involving huge costs before the merits of the matter are aired in court. One of the objects of the legislation is to avoid litigation rather than propagate it. This is the fourth case in which information has been sought in terms of the Act that has in the past eighteen months required the attention of this court. ...The present appeal illustrates how a disregard of the aims of the Act and the absence of common sense and reasonableness has resulted in this court having to deal with a matter which should never have required litigation.

...

[10] In MEC for Roads and Public Works (supra) this court expressed the view that where a record of information is requested in terms of s 50 and the State body or private person or institution obdurately and unreasonably refuses to furnish it in circumstances where it obviously should have, the court may make a punitive award of costs to mark its displeasure (paras [20] and [21] of that judgment). The conduct of SAA in this case in my view warrants such an order... As stated earlier, this was never disputed by SAA. By the simple expedient of furnishing appellant with the computer print-out this whole issue could have been resolved. Even if SAA's conduct in persistently refusing to make the record available was not intentionally vexatious, it had that effect. (In Re Alluvial Creek Ltd 1929 CPD 532 at 535.) As a mark of this court's displeasure at SAA's conduct a punitive costs order will be made in respect of the proceeding in the court below.

For a copy of the full judgment in *Claase v Information Officer of South African Airways* [2006] SCA 163 (RSA) go to
<http://www.ufs.ac.za/apps/law/appeal/files/2006/4/886Claase.pdf>.